

2011 SENATE FINANCE AND TAXATION

SB 2292

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee
Lewis and Clark Room, State Capitol

SB 2292
2/2/2011
Job Number 13841

Conference Committee

A. Rittmiller

Explanation or reason for introduction of bill/resolution:

Relating to sales tax exemption for nonprofit entities

Minutes:

Written Testimony Attached

Chairman Cook opened the hearing on SB 2292.

Senator Hogue – SB 2292 I introduced at the request of our Tax Commissioner. It deals with the sales tax exemption. As you and the committee know, we have this sales and use tax exemption that applies to everything, virtually everything, that's personal property. Then we have a separate statute that provides a list of exemptions and currently the list of exemptions, there is 54 of them, in our statute. There are even some sub exemptions within those 54 exemptions. SB 2292 does not create a new exemption, but it changes an existing exemption, exemption number 4. Basically what it says is if you are holding an event on public property, a city auditorium, a public school, what have you, certain sales are exempt from the sales tax under current law if they do not exceed \$5,000 in total. What SB 2292 does, is 2 things. First of all, it moves the threshold from \$5,000 to \$10,000, and the second thing is under existing law if you go over \$5,000 in taxable sales, the entire \$5,000 is subject to sales tax and this bill eliminates that particular penalty for going over \$5,000. The current law I would suggest is almost a disincentive to be successful because if you creep over that \$5,000 even by \$1, that whole \$5,000 is subject to tax. So those are the 2 objectives of SB 2292.

Myles Vosberg, Tax Department – (see attached testimony A in favor of SB 2292)

Chairman Cook asked for testimony opposed to SB 2292.

Chairman Cook asked for neutral testimony for SB 2292.

No further action was taken.

Chairman Cook closed the hearing on SB 2292.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Finance and Taxation Committee Lewis and Clark Room, State Capitol

SB 2292
2/8/2011
Job Number 14187

Conference Committee

A. R. Miller

Explanation or reason for introduction of bill/resolution:

Relating to sales tax exemption for nonprofit entities

Minutes:

Committee Work

Chairman Cook opened discussion on SB 2292.

Senator Hogue – I will move a Do Pass.

Seconded by **Senator Burckhard**.

Chairman Cook – Discussion? Ask the clerk to take the roll on a Do Pass on SB 2292.
(7-0-0)

Carried by **Senator Hogue**.

FISCAL NOTE

Requested by Legislative Council
01/21/2011

Bill/Resolution No.: SB 2292

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB 2292 modifies the sales tax exemption for nonprofit entities.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

A qualifying event's taxable threshold is changed from \$5000 to \$10,000, with only the increment over \$10,000 becoming taxable. This will likely result in a reduction in state general fund and state aid distribution fund revenues. The amount of the reduction cannot be determined.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	02/01/2011

Date: 2-8-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2292

Senate Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment

Rerefer to Appropriations Reconsider

Motion Made By Senator Hogue Seconded By Senator Burckhard

Senators	Yes	No	Senators	Yes	No
Dwight Cook - Chairman	X		Jim Dotzenrod	X	
Joe Miller - Vice Chairman	X		Connie Triplett	X	
Randy Burckhard	X				
David Hogue	X				
Dave Oehlke	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Hogue

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2292: Finance and Taxation Committee (Sen. Cook, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2292 was placed on the Eleventh order on the calendar.

2011 HOUSE FINANCE AND TAXATION

SB 2292

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2292
March 8, 2011
#15096

Conference Committee

Committee Clerk Signature

Mary Brueker

Explanation or reason for introduction of bill/resolution:

A bill relating to the sales tax exemption for nonprofit entities; and to provide an effective date.

Minutes:

See attached testimony #1, #2

Senator Hogue: Introduced bill. Support. Please refer to attached testimony #1.

Representative Metcalf: Co-sponsor. Support. This bill came through an individual who lives north of me, around Aneta, and he is a dairy farmer and has been involved in the dairy products promotion. He told me that this \$5,000 minimum that was set a long time ago he said they always add that together so if he's at the state fair or the winter show or wherever he is promoting his product they add that together until they get up to \$5,000 and then at \$5,000 and up he has to pay the taxes on that. It almost eliminated the promotion of his product. He came to me to see if we could do anything about it and I said we could always run a bill in and Senator Hogue put it through for us. I would encourage you to sincerely take a look at this bill for the citizens of North Dakota, to our country and our state. It is at hardly any cost because they work for nothing and they promote their product that way.

Myles Vosberg, Director of the Tax Administration Division of the Office of State Tax Commissioner: Support. Please refer to attached testimony #2.

Representative Shirley Meyer: Is this per one event or does it accrue over a year?

Myles Vosberg: It is per event so that cap we have is per event.

Chairman Wesley R. Belter: No further testimony. Closed hearing on SB 2292.

2011 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2292
March 8, 2011
#15125

Conference Committee

Committee Clerk Signature

Mary Brucker

Explanation or reason for introduction of bill/resolution:

A bill relating to the sales tax exemption for nonprofit entities; and to provide an effective date.

Minutes:

No attachments.

Representative Shirley Meyer: Made a motion for DO PASS.

Representative Patrick Hatlestad: Seconded.

Representative Glen Froseth: The way this bill is now if you make \$5,001 you pay the tax on the \$5,001 but now with the new wording if you make \$10,001 you don't pay any tax on the whole \$10,000 so it would seem to me that if you would have just eliminated the tax on \$5,001 and having to pay it on the whole thing it would have been just as good of a bill. This makes it twice as good. They maybe knew what they were doing.

Representative Lonny B. Winrich: I think the problem is that you can't estimate. If you set up a concession stand for an event you can't estimate your gross sales that accurately. If you're going along and not paying the sales tax then all of a sudden you cross the limit, if you start collecting your sales tax then you are way behind already. The way the new limit works is when you reach the point where you have to collect sales tax you go ahead and do it.

Representative Dave Weiler: By removing the sales tax from events up to \$10,000 wouldn't this significantly reduce some work load in the tax department? I would think that by no longer collecting this tax there is going to be a big work load that is going to be reduced in the tax department. I find it interesting that these agencies come in and this bill was asked for by the tax department, it was not Senator Hogue putting in the bill he was asked to put this in by the tax department. These agencies can come in and put in bills that significantly reduce their work load and they don't want to reduce FTEs but now the bill that we've just talked about the Department of Commerce wants to come in it will significantly increase their work load so they need to fix the fiscal note so they can add a FTE. I'm getting a little tired of this.

Chairman Wesley R. Belter: This does not affect the Boys Ranch or ARC or any of these stores, does it?

Representative Lonny B. Winrich: I understood Myles to indicate that this was not on some aggregate business like that it was for single events.

Chairman Wesley R. Belter: It says it does not apply to activities that the seller competes with retailers which ARC and Boys Ranch and Air Looms do.

Representative Roscoe Streyle: I think where you see this happening is at the state fair. For example, I compete against them as a for profit business. I don't have a problem with the concept I'm just saying at the fairs they see a benefit to this on \$500 in \$10,000 of sales. They easily all do over the \$10,000.

Representative Glen Froseth: The North Dakota Dairy Association has an ice cream booth and they sale ice cream throughout the entire fair. I bet they make well over the \$10,000 as there is a line of people there all day long.

Representative Roscoe Streyle: I guarantee that every one of the nonprofits do \$20,000 plus at the fair.

**A roll call vote was taken: YES 11 NO 3 ABSENT 0
MOTION CARRIED FOR DO PASS.**

Representative Glen Froseth will carry SB 2292.

Date: 3-8-11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2292

House Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment

Rerefer to Appropriations Reconsider

Motion Made By Rep. Meyer Seconded By Rep. Hatlestad

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter	✓		Scot Kelsh	✓	
Vice Chair. Craig Headland	✓		Shirley Meyer	✓	
Glen Froseth	✓		Lonny B. Winrich	✓	
Bette Grande	✓		Steven L. Zaiser	✓	
Patrick Hatlestad	✓				
Mark S. Owens	✓				
Roscoe Streyle		✓			
Wayne Trottier	✓				
Dave Weiler		✓			
Dwight Wrangham		✓			

Total (Yes) 11 No 3

Absent 0

Floor Assignment Rep. Froseth

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2292: Finance and Taxation Committee (Rep. Belter, Chairman) recommends DO PASS (11 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). SB 2292 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

SB 2292

**TESTIMONY OF THE OFFICE OF STATE TAX COMMISSIONER
BEFORE THE
SENATE FINANCE AND TAXATION COMMITTEE**

SENATE BILL 2292

February 2, 2011

Chairman Cook, members of the Senate Finance and Taxation Committee, I am Myles Vosberg, Director of the Tax Administration Division of the Office of State Tax Commissioner and I am here today in support Senate Bill 2292.

BACKGROUND

Senate Bill 2292 amends subsection 4 of N.D.C.C. § 57-39.4, which authorizes sales tax exemptions for four separate activities. These activities are 1) sales of tickets and admission to fairs, 2) fund raising activity when the net proceeds are used for a educational, religious, or charitable purpose, 3) sales by a school district when the proceeds are expended in accordance with school district activity fund or revolving fund laws, and 4) sales of nonprofit dramatic arts organizations such as local theatre and symphony groups. Although Senate Bill 2292 reorganizes the entire section of the law to make it easier to read and understand, only the provisions relating to fund raising activities where the proceeds are used for an educational, religious, or charitable purpose have been changed.

When the sales tax exemption for fundraising activities for educational, religious, and charitable purposes was originally established, there were no limitations for sales made in publically owned facilities. However, large concert promoters discovered they could take advantage of the sales tax exemption by finding a charitable organization to "sponsor" the concert and sell the admission tickets in exchange for a relatively small fee. By making ticket sales through a charitable organization, the concert could avoid remitting sales tax on the ticket sales and increase their profits. Because most concerts are held in publically owned facilities, the 1979 legislature amended the exemption by inserting language that would disallow the exemption if the sale took place in a publically owned facility.

Over time, it became much more common for fundraising events to be held in public facilities such as the state fair grounds, civic centers, the capital grounds, and street fairs. As a result, sales that were originally intended to be exempt now were subject to tax because the sales were made in a publically owned facility. In an attempt to resolve this issue, the 2001 legislature approved another amendment to exempt fundraising type sales made in a

publically owned facility if the sales were less than \$5,000. Although the \$5,000 limit helped to alleviate the problem, we are finding this cap continues to cause some issues for sellers that don't know if they will exceed the \$5,000 limit at a particular event.

EXPLANATION OF THE BILL

Senate Bill 2292 changes two provisions of the exemption that applies to fundraising sales made in publically owned facilities. First, the current \$5,000 limit is increased to \$10,000. Secondly, only sales above the \$10,000 limit will be subject to tax. For example, under the current law, if a charitable organization makes qualifying fundraising sales in a publically owned facility of \$4,999, all the sales are exempt. If the event sales for the same organization total \$5,001, all \$5,001 of sales are subject to tax. Under SB 2292 all qualifying charitable sales up to \$10,000 made in a publically owned facility will be exempt. If a seller's total sales at the same event are \$10,100, only \$100 is taxable.

The current exemption for charitable sales excludes sales that are in direct competition with retailers. The amendment on lines 16 through 19 of page 1 defines "direct competition" for purposes of the exemption. Although this is revised language in the law, it describes our current policy and has no impact on the exemption.

CONCLUSION

The intent of this bill is to address current concerns regarding organizations that that make fundraising sales at events held in publically owned facilities. I believe the changes will make the bill easier to understand and make any potential tax liability for charitable organizations more predictable. We ask the committee for a do pass recommendation on SB2292. Thank you for your consideration.

Testimony #1

TESTIMONY OF DAVID HOGUE IN SUPPORT OF SB 2292

House Finance and Taxation Committee

March 8, 2011

9:30 am

Good Morning Chairman Belter and members of the Committee. My name is David Hogue. I am a North Dakota Senator representing District 38 which includes Northwest Minot and the city of Burlington.

SB 2292 relates to an exception to an exemption to our general sales tax law. As we're all aware, Mr. Chairman, the state imposes a five percent sales tax upon the sale of goods. We provide at least 54 exemptions from the sales tax imposition. One exemption relates to sales by non profits under certain situations when the non-profit expends those funds for charitable purposes.

Under existing law, we exempt taxable sales from educational, religious, or other charitable activities. However, existing law provides an exception to the exemption. If the non-profit organization generates in excess of \$ 5,000 from sales on public property, we tax it.

SB 2292 would make modest changes to this result. SB 2292 will increase the threshold from \$5,000 to \$ 10,000 and would not tax the entire amount once the non-profit crosses over the threshold.

**TESTIMONY OF THE OFFICE OF STATE TAX COMMISSIONER
BEFORE THE
HOUSE FINANCE AND TAXATION COMMITTEE**

SENATE BILL 2292

March 8, 2011

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BACKGROUND

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